In the result, and having given this matter the most careful consideration, the application in this originating summons has to be dismissed with costs.

Application dismissed.

Solicitors: *JB Jeyaretnam & Co.*

Reported by *Kevin Tan Yew Lee*

Public Prosecutor v Pong Tek Yin

HIGH COURT (SINGAPORE) — CRIMINAL REVISION NO 1 OF 1990
THEAN J
31 MAY 1990

Criminal Law — Bigamy — Territoriality of s 494 of the Penal Code — Whether extended by Women's Charter — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 15 — Penal Code (Cap 224, 1985 Ed), s 494 — Criminal Procedure Code (Cap 68, 1985 Ed), s 9 — Women's Charter (Cap 47, 1970 Ed), ss 3, 5 & 6

Words and Phrases — 'Marries' — Penal Code (Cap 224, 1985 Ed), s 494

The accused, in 1964, married one Lim Seh Moi in Kuala Lumpur. There were five children born to this union. In 1970 he came to Singapore to work. In 1972 he returned to Malaysia and in 1974 separated from his wife. On 10 May 1975, the applicant went through a Chinese customary marriage with Lim Nya Hoo in Taiping, Perak. Two children were born to the marriage. On 1 June 1978, the marriage was solemnized by the Registrar of Marriages in Perak. In 1979, the accused applied for and obtained permanent resident status in Singapore and in 1987 obtained citizenship. In 1988 he applied for citizenship for his wife and the second marriage was discovered. He was charged with bigamy under s 494 of the Penal Code ('the Code') to which he pleaded guilty and was sentenced to one day's imprisonment and fined $900. He then applied for revision.

Held, quashing the conviction:

(1) It is a well established presumption that in the absence of clear and specific words to the effect, a statute which creates an offence is not intended to make an act taking place outside the territorial jurisdiction of the country an offence triable in the courts here.

(2) There are no clear and specific words in s 494 of the Code to suggest that the section had any extra-territorial operation. The word 'marries' in the section therefore must be construed to mean 'marries in Singapore'. A bigamous marriage taking place abroad therefore is not an offence punishable under that section.

(3) The Women's Charter did not apply to the applicant as he was not, on 1 June 1978, in Singapore nor was he at that time domiciled in Singapore and resident abroad.

(4) Even if the Women's Charter applied to the applicant, the Charter did not enlarge the ambit of s 494 of the Code to the extent that it covered a bigamous marriage contracted abroad. It followed therefore that the act committed by the applicant, namely, contracting the 1978 marriage in Perak, was not an offence punishable under s 494 of the Code.

Cases referred to

1 *PP* v *Nai Prasit* [1961] MLJ 62 (folld)
2 *PP* v *Rajappan* [1986] 1 MLJ 152 (folld)
3 *Air-India* v *Wiggins* [1980] 2 All ER 593 (folld)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 9
Penal Code (Cap 224, 1985 Ed) s 494
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 15
Women's Charter (Cap 47, 1970 Ed) ss 3, 4, 5, 6

Yang Ing Loong for the Public Prosecutor.
Richard Ang for the accused.

Cur Adv Vult

Thean J: This is a criminal revision which arises out of the conviction of one Pong Tek Yin alias Fong Foot Ting ('the accused') of a charge of bigamy punishable under s 494 of the Penal Code (Cap 224, 1985 Ed) in DAC 2480 of 1989 before the district court. On 4 March 1989 before the district court, the accused pleaded guilty to the following charge:

> You, Pong Tek Yin (Fong Foot Ting)
> M/49 Yrs NRIC No: 1853434-G
>
> are charged that you, on or about the 1st June, 1970, at the Registry of Marriages, Perak, Malaysia, married one Mdm Lim Nya Hoo when your wife Mdm Lim Seh Moi was still living and you have thereby committed an offence punishable under section 494 of the Penal Code, Chapter 224.

The statement of facts admitted by the accused in relation to the charge is as follows:

> Complainant is Mrs Chua-Quek Soo Noi attached to the Registry of Citizens, Singapore.
>
> 2 Accused is one:
> Pong Tek Yin @ Fong Foot Ting m/49 yrs
> NRIC No 1853434-G
> Blk 199, Boon Lay Drive #15-61 (2264)
>
> 3 In her letter A/F 810505 (G) dated 17 March 1988, complainant reported that the accused had contracted two marriages.
>
> 4 Investigations revealed that the accused first contracted a customary marriage in accordance with the Chinese customary rites with Mdm Lim Seh Moi sometime in 1964 in Kuala Lumpur, Malaysia. By this marriage, they have five children.
>
> 5 Whilst his first marriage was still subsisting, the accused contracted another customary marriage with Mdm Lim Nya Hoo, NRIC No 4160219-FOM, on 10 May 1975. Their marriage was re-registered at the Registry of Marriages, Perak, Malaysia, on 1 June 1978 vide Marriage Certificate No 160/78. By this union, they have two children.

6 Accused's second marriage is therefore bigamous, as at the time of his second marriage, his first marriage with Mdm Lim Seh Moi was still subsisting and has not been dissolved.

7 Accused is charged accordingly.

The accused was convicted and sentenced by the learned district judge to a term of one day's imprisonment and a fine of $900, and in default of payment a term of 45 days' imprisonment. He served the nominal term of imprisonment and paid the fine. At that time he was not represented by counsel.

Before me further facts were produced, which were not disputed. They are as follows. The accused was a Malaysian citizen, and resided in Malaysia. In 1964 he married one Lim Seh Moi, also a Malaysian citizen, in Malaysia according to Chinese customary rites, and five children were born out of this union. He first came to Singapore to work in 1970; he worked as a labourer in a shipyard. In 1972 he went back to Malaysia, and disputes between him and his wife arose. As a result, he left her in 1974. It is not clear whether at that time he was still working in Singapore, or whether only after he had left her did he return to Singapore to work. In any case, in the same year, he met one Lim Nya Hoo, also a Malaysian citizen, in Singapore. On 10 May 1975, the accused went through a Chinese customary marriage with Lim Nya Hoo ('1975 marriage') in Taiping in the state of Perak, and subsequently began cohabitation with her in Singapore. Two children were born out of this marriage. On 1 June 1978, the accused and Lim Nya Hoo went through a civil marriage ('1978 marriage') before the Registrar of Marriages in Perak under the Civil Marriage Ordinance 1952, then in force in Malaysia. In this respect, the statement of facts, which said that the parties registered their marriage at the Registry of Marriages in Perak, is not correct. According to the certified true copy of the marriage certificate, their marriage on 1 June 1978 was solemnized by the Registrar of Marriages in accordance with the Civil Marriage Ordinance 1952; it was not simply a registration of their 1975 marriage under the Registration of Marriage Ordinance 1952. In other words, they purported to contract a civil marriage under the Civil Marriage Ordinance 1952. I say 'purported' advisedly, because under s 30(b) of that Ordinance, a marriage purported to be solemnized thereunder is void, if either of the parties was at the date of such marriage married under any law, religion, custom or usage to any person other than the other party; that precisely was what happened in this case: the accused was, at that date, married to Lim Seh Moi under Chinese customary rites, and hence the 1978 marriage is by virtue of that section void.

In 1979, the accused applied for and obtained a permanent resident status in Singapore, and on 6 October 1987 he acquired Singapore citizenship. In 1988, the accused applied for Singapore citizenship for his second wife, Lim Nya Hoo, and it was in the course of processing this application that the 1978 marriage surfaced. In consequence, a complaint was lodged by an officer of the Registry of Citizens, and criminal proceedings were initiated against the accused which culminated in his conviction.

Before me, counsel for the accused mounted a two-pronged attack on the conviction. First, he submitted that a Singapore court has no jurisdiction to try the act alleged to be an offence, as the act was committed outside Singapore, assuming that such an act is an offence punishable under s 494 of the Penal Code. Secondly, and independently of the first argument, he submitted that s 494 of the Penal Code has no extra-territorial operation, and as the act alleged to be an offence was committed outside Singapore, it is not punishable under s 494. As will become apparent, both arguments are closely connected; the first hinges on the second, and I therefore propose to consider them jointly as one.

As a starting point, counsel referred me to s 15 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) which provides:

> (1) The High Court shall have jurisdiction to try all offences committed
>
> (a) within Singapore;
> (b) on the high seas on board any ship or aircraft registered in Singapore;
> (c) by any person who is a citizen of Singapore on the high seas or on any aircraft;
> (d) by any person on the high seas where the offence is piracy by the law of nations; and
> (e) by any person within or outside Singapore where the offence is punishable under and by virtue of the provisions of the Hijacking and Protection of Aircraft Act.
>
> (2) The High Court may pass any sentence allowed by law.

Counsel submitted that on the basis of this section the High Court has no jurisdiction to try the act alleged to be an offence, as the act was committed outside Singapore, and a fortiori the district court also has no jurisdiction. He relied on two Malaysian authorities: *PP* v *Nai Prasit*[1] and *PP* v *Rajappan*.[2] In the first case the accused was convicted of bigamy punishable under s 494 of the Penal Code (FMS Cap 45); the second marriage on which the charge was founded took place in Australia. Upon a criminal revision, Thomson CJ held that the court had no jurisdiction to try the offence and the proceedings were a nullity, and accordingly the conviction was set aside. He said, at p 62:

> The actual act of bigamy, that is to say, the second marriage which was alleged to be void by reason of the wife of the first marriage being still alive, took place in the State of Victoria in the Commonwealth of Australia. In the circumstances the sessions court had no jurisdiction to try the case. The territorial jurisdiction of the sessions court is set out in s 59 of the Courts Ordinance and s 9 of the Criminal Procedure Code and except in the case of certain offences committed on the

> High Seas (that is outside territorial waters) the court has no jurisdiction to try any offence committed outside the Federation.
>
> In the present case, therefore, the proceedings were a nullity and the conviction of the accused is accordingly set aside.

Thomson CJ arrived at the conclusion purely on the basis that the Courts Ordinance and the Criminal Procedure Code did not confer jurisdiction on the court to try the offence. He did not consider and decide whether s 494 of the Penal Code has extra-territorial operation, ie whether the bigamous marriage committed abroad is punishable under s 494.

That decision was approved by the Supreme Court of Malaysia in the *Rajappan* case.[2] In that case the accused was married according to Hindu customs in India in 1947. In 1954 the accused, his wife and children migrated to Malaysia, and his marriage was registered with the Registry of Marriages, Malaysia. In 1984, the accused, whilst still being married to his wife, went to India and married another woman and brought her back to Malaysia, and lived together with her in Klang. On a complaint by his first wife, the accused was prosecuted before the magistrate's court. The learned magistrate held he had no jurisdiction to try the alleged offence. Upon application by the public prosecutor under s 127(c) of the Malaysian Criminal Procedure Code, the High Court held that bigamy committed by a person was not an offence in Malaysia if the second marriage took place outside the country, even though the spouse of the person of the earlier marriage was alive, and the courts in Malaysia had no jurisdiction to try the offence as it was committed outside Malaysia. The learned public prosecutor, acting under s 66 of the Courts of Judicature Act 1964 of Malaysia, then referred for determination by the Supreme Court two questions, namely:

(a) whether or not in law a person who is domiciled in Malaysia and marries again during the lifetime of his or her husband or wife at a place outside Malaysia and thereafter returns to Malaysia with the second spouse has committed an offence punishable under s 494 of the Penal Code (FMS Cap 45); and

(b) if the answer to question (a) is in the affirmative, then whether or not in law a magistrate's court has jurisdiction to try such person for an offence punishable under s 494 of the Penal Code (FMS Cap 45).

On the first question, the Supreme Court held that a bigamous marriage contracted abroad by a Malaysian citizen or permanent resident is not an offence punishable under s 494 of the Malaysian Penal Code. This conclusion was arrived at on a construction of s 494 of the Malaysian Penal Code and ss 5, 6 and 7 of the Law Reform (Marriage and Divorce) Act 1976. Salleh Abas LP said at p 157:

> Reverting back to the question which we are required to answer, I am of the view that a bigamous marriage, committed abroad by a Malaysian citizen or a permanent resident notwithstanding such marriage is in contravention of s 5(1) of the LRA, is not an offence punishable under s 494 of the PC. Section 7 of the LRA does not make the offence under s 494 of the PC an extra-territorial offence. It simply declares that a bigamous marriage in contravention of s 5 shall be deemed to be an offence of bigamy. Even without this deeming provision, a marriage in contravention of s 5 will be a marriage 'which is void by reason of its taking place during the life of such husband or wife' within the meaning of s 494 of the PC and so constituted an offence of bigamy under it. In other words, s 7 adds nothing new to s 494 of the PC. It is merely declaratory of the position under the Code. If the offence under s 494 is not extra-territorial (see *PP* v *Nai Prasit* [1961] MLJ 62), I cannot see how it could not be extra-territorial by reason of ss 5, 6 and 7 of LRA. These sections only deal with situations obtaining in Malaysia. The only effect of the LRA on s 494 of the PC is that the persons who can be guilty of the offence of bigamy are extended to all Malaysian citizens and those having Malaysian domicile provided they are not Muslims. The Act extends only the personal scope but not its material scope, ie the actus reus.

On the second question, the Supreme Court held that on the true construction of s 22 of the Courts of Judicature Act 1964 the High Court had no jurisdiction to try the offence. Salleh Abas LP, after referring to s 22(1), said at p 158:

> There is nothing in this section from which it could be inferred that the High Court can try a Malaysian citizen or permanent resident who whilst already married has contracted a bigamous marriage abroad. The seemingly wide jurisdiction given to the High Court under para (b)(iii) of sub-s (1) to try a Malaysian citizen or permanent resident in respect of an offence committed in any place without and beyond Malaysia, is limited only to trial of offences under Chapter VI of PC, those under the Extra-Territorial Offences Act, and those certified by the Attorney-General to be security offences.
>
> It would appear therefore that the issue of jurisdiction or lack of it is tied up with the issue whether an act is an offence or not. There is no point in giving a jurisdiction when the relevant act is not an offence. On the other hand it is ridiculous for Parliament to deem an act committed abroad to be an offence without giving jurisdiction to try such offence to any particular court or courts. The truth is that as the court is not given the jurisdiction, the act complained of cannot be an offence.

Section 22(1) of the Malaysian Courts of Judicature Act 1964 is in pari materia with s 15(1) of our Supreme Court of Judicature Act, and if s 15(1) is the only provision governing the jurisdiction of the courts, I would agree entirely with counsel for the accused that the courts have no jurisdiction to try the offence with which the accused was charged. The learned deputy public prosecutor, however, has referred me to s 9 of the Criminal Procedure Code (Cap 68, 1985 Ed), and contended that under that section the courts have jurisdiction to try the offence. Section 9 is as follows:

Subject to the other provisions of this Code —

(a) any offence under the Penal Code may be tried by the High Court or by any other court by which the offence is shown to be triable in the 8th column of Schedule A;
(b) any offence under any law other than the Penal Code may be tried by the High Court or by any other court mentioned in that behalf by that law;
(c) when no court is so mentioned such offence may be tried by the High Court or by any court constituted under this Code:

Provided that

(i) no District Court shall try any such offence which is punishable with imprisonment for a term which may exceed 10 years;
(ii) no Magistrate's Court shall try any offence which is punishable with imprisonment for a term which may exceed 3 years.

The equivalent of s 9 in the Malaysian Criminal Procedure Code was not discussed and considered in *Rajappan*.[2] However, presumably, since the Supreme Court had decided that s 494 of the Penal Code has no extra-territorial operation, it became unnecessary to consider and decide whether the equivalent of s 9 of the Malaysian Criminal Procedure Code confers any jurisdiction on the court. In my opinion, s 9 of our Criminal Procedure Code does confer jurisdiction on the High Court and, in numerous cases, on the subordinate courts as provided in Schedule A, to try offences punishable under the Penal Code. As provided in Schedule A, the offence punishable under s 494 of the Penal Code is triable by a district court, besides the High Court. It therefore follows that if the act committed by the accused is an offence punishable under s 494 of the Penal Code, the district court, besides the High Court, will have jurisdiction to try the offence and convict him.

I now turn to the next question that immediately arises, namely: whether the act committed by the accused, ie contracting the 1978 marriage or, for that matter, the 1975 marriage in the State of Perak is an offence punishable under s 494 of the Penal Code. This is identical with the first question posed before the Supreme Court in Malaysia in the *Rajappan* case,[2] which the court there answered in the negative. It is convenient at this stage to set out s 494 of the Penal Code, which is as follows:

> Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine.
>
> *Exception. — This section does not extend to any person whose marriage, with such husband or wife, has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, has been continually absent from such person for the space of 7 years, and has not been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage, before the marriage takes place, informs the person with whom the marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.*

This section is identical with s 494 of the Malaysian Penal Code. Counsel for the accused therefore relied on *Nai Prasit*[1] and *Rajappan*[2] and submitted that this section has no extra-territorial effect and the second marriage entered into by the accused abroad is not punishable under this section. The question is one of construction, and in construing that section it must be borne in mind that there is a well-established presumption that in the absence of clear and specific words to the effect a statute which creates an offence is not intended to make an act taking place outside the territorial jurisdiction of the country an offence triable in the courts here: *Air-India* v *Wiggins*.[3] In that case, Air-India carried a cargo of some 2,000 live birds on a flight from India to London with a scheduled stop at Kuwait. While the aircraft was at Kuwait it developed engine trouble and in consequence was delayed on the tarmac for 31 hours. During this period of delay the birds remained unattended in crates in the aircraft without proper ventilation. As a result only 89 birds were found to be alive when the aircraft arrived at Heathrow airport in London, the remainder of about 2,000 had died from asphyxiation. It was found that these birds were already dead before the aircraft entered the British airspace. Air-India were charged with offences under the Transit of Animals (General) Order 1973. It was held that on the true construction of the relevant provisions of that Order and s 23 of the Diseases of Animals Act 1950 (under which the Order was made and which was amended and applied to air transport by s 11 and Schedule 2, para 1(1) of the Agriculture (Miscellaneous Provisions) Act 1954), the commission of the offence ceased when the birds' suffering ended with their deaths in Kuwait, and, accordingly, no offence was committed by the airline in respect of those birds which were dead. In the course of his judgment, Lord Diplock had this to say about the statutory presumption against extra-territorial effect, at p 596:

> My Lords, in construing Acts of Parliament there is a well-established presumption that, in the absence of clear and specific words to the contrary, an 'offence-creating section' of an Act of Parliament (to borrow an expression used by this House in *Cox* v *Army Council* [1962] 1 All ER 880, [1963] AC 48) was not intended to make conduct taking place outside the territorial jurisdiction of the Crown an offence triable in an English criminal court. As Viscount Simonds put it ([1962] 1 All ER 880 at 882, [1963] AC 48 at 67):
>
> > '... apart from those exceptional cases in which specific provision is made in regard to acts committed abroad, the whole body of the criminal law of England deals only with acts committed in England.'

Cox v *Army Council* was concerned with a statute which in the plainest possible words made acts committed abroad by serving members of the British Army offences triable by

court-martial. The presumption against a parliamentary intention to make acts done by foreigners abroad offences triable by English criminal courts is even stronger. As Lord Russell CJ said in *R* v *Jameson* [1896] 2 QB 425 at 430:

> 'One other general canon of construction is this — that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect of acts done by them outside the dominions of the sovereign power enacting.'

Returning to s 494 of our Penal Code, there are no clear and specific words therein to suggest that the section has any extra-territorial operation. On the basis of the presumption, the word 'marries' in the section must be construed to mean 'marries in Singapore'. In my judgment, on the true construction of s 494 a bigamous marriage taking place abroad is not an offence punishable under that section. On this point, I respectfully follow the decisions in *Nai Prasit*[1] and *Rajappan*.[2]

The next question is whether this provision has been extended by the relevant provisions of the Women's Charter so as to cover a bigamous marriage contracted abroad and render it punishable under s 494 of the Penal Code. The relevant provisions of the Women's Charter are ss 3(1), 4(1), 5(1) and 6, and in this connection, the relevant provisions I have to consider are those in force at the time when the act for which the accused was charged was committed, ie 1 June 1978. Sections 3(1), 4(1), 5(1) and 6 then in force provided as follows:

> 3(1) Save as is otherwise expressly provided this Act shall apply to all persons in Singapore and shall also apply to all persons domiciled in Singapore who are resident outside Singapore.
>
> 4(1) Every person who on the date of the coming into operation of this Act is lawfully married under any law, religion, custom or usage to one or more spouses shall be incapable, during the continuance of such marriage or marriages of contracting a valid marriage under any law, religion, custom or usage with any person other than such spouse or spouses.
>
> 5(1) Every marriage contracted in contravention of the provisions of section 4 in this Act shall be void.
>
> 6 Any person lawfully married under any law, religion, custom or usage who during the continuance of such marriage purports to contract a marriage under any law, religion, custom or usage in contravention of the provisions of section 4 of this Act shall be deemed to commit the offence of marrying again during the lifetime of husband or wife, as the case may be, within the meaning of section 494 of the Penal Code.

It was submitted by the learned deputy public prosecutor that s 3 applies to two classes of person, namely: (i) all persons in Singapore and (ii) all persons domiciled in Singapore who are resident outside Singapore, and that at the material time, that is, 1 June 1978, the accused was domiciled in Singapore and therefore falls within the second category of persons in s 3. The words, 'Any person' in s 6 mean any person falling within s 3, and applying s 6 to the accused, he was at the material time lawfully married to his first wife and during the continuance of that marriage purported to contract a marriage with his second wife in contravention of s 4, and therefore he is deemed to have committed the offence of marrying again during the lifetime of his first wife within the meaning of s 494 of the Penal Code. I am unable to accept this argument. There are two difficulties in the way. First, I am not satisfied that on the facts before me the accused at the material time was domiciled in Singapore and was resident in Malaysia. This the prosecution has to establish, and the facts are inadequate for the purpose. On the facts before me, the accused was not in Singapore when he committed the act; nor was he at that time domiciled in Singapore and resident abroad. The Women's Charter therefore did not, at the time, apply to the accused, and it follows that the act committed by the accused, namely, contracting the 1978 marriage in Perak, was not an offence punishable under s 494 of the Penal Code.

Secondly, assuming that the Women's Charter by virtue of s 3 thereof applies to him, and therefore he is 'a person' falling within s 6, there is still the question whether that section enlarges the ambit of s 494 of the Penal Code to the extent that it covers a bigamous marriage contracted abroad. In my opinion, as it stood at that time, it did not. It did not provide expressly or by necessary implication that a person (to whom the Women's Charter applied) who contracted a bigamous marriage abroad would be deemed to have committed the offence within the meaning of s 494 of the Penal Code. Sections 3 and 6 of the Women's Charter therefore, as they stood in 1978, did not confer on s 494 of the Penal Code any extra-territorial effect. Since then, material amendments have been made to ss 3, 5 and 6 of the Women's Charter, and the question whether these sections have enlarged the scope of s 494 of the Penal Code giving it extra-territorial operation is not before me, and I refrain from expressing any opinion on it.

In the result, in my judgment, neither under s 15 of the Supreme Court of Judicature Act nor under s 9 of the Criminal Procedure Code has a court in Singapore any jurisdiction to try the alleged offence committed by the accused. The proceedings before the district court were therefore a nullity. Accordingly, I quash the conviction and set aside the sentence, and order that the fine of $900 paid by the accused be refunded to him.

Order accordingly.

Solicitors: *Ang JW & Partners.*

Reported by *Mathavan Devadas*